BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 977/15 & ELAT 981/15

In the matter of :-

Seeooduth Doongoor

Appellant

v/s

District Council of Pamplemousses

Respondent

IPO:

Feroze Sahebally

Co-respondent

AND **In the matter of :-**

Munnohur Atma T.

Appellant

v/s

District Council of Pamplemousses

Respondent

IPO:

Feroze Sahebally

Co-respondent

RULING

1. These two appeals have been consolidated and are against the decision of the Council for having granted a Building and land Use Permit ["BLUP"] to the co-respondent for conversion of part of a residential building into a workshop for the repair and assembly of bicycles and motorcycles. Counsel appearing for the co-respondent has raised a two limbed point in law to the effect that the notice of appeal has been lodged outside the prescribed statutory time frame and the co-respondent having been joined as a party at a late stage, it would not be in the interest of justice to proceed with the case. The motion was resisted by the appellants. The stand taken by Counsel for the respondent is that the Tribunal cannot entertain any appeal beyond the 21 days statutory time frame and for joinder of parties there is no time frame provided by law. We have duly considered the submissions of all Counsel. We shall deal with the issues raised and will only make reference any submission where we deem it fit to do so.

2. The proceedings of the Tribunal are regulated under **section 5** of the **Environment and Land Use Appeal Tribunal Act 2012 ["ELAT Act"]. Section 5 (4) (a)** provides *"Every appeal under section 4 (1) shall, subject to paragraph (b), be brought before the Tribunal by depositing, with the Secretary, a notice of appeal in the form set out in the Schedule, setting out the grounds of appeal concisely and precisely, not later than 21 days fromthe date of the decision under reference being notified to the party wishing to appeal."*[The stress is ours].This provision has been drafted in mandatory terms, and not discretionary, using the words *"shall...be brought"* and *"not later than 21 days"*, which show that the intention of the legislator was infact to give to the Tribunal in this specific context no discretion to travel outside the time frame provided by the law. Therefore we agree that the Tribunal has not discretion to accept appeals lodged outside the time frame prescribed by statute. It is also clear from this section that the appellants had a duty to notify the Secretary of the Tribunal of their intention to appeal and their grounds for appealing.

3. The notice of appeal found in the case file of Mr. Doongoor dated "21.09.15"clearly shows that the notice of appeal was received on the 23rd September 2015 and no date of notification of the decision as inserted by the appellant at paragraph 2 of the notice of appeal. This being said, on a perusal of the file, there is a letter dated 30.08.15 addressed to the Secretary of the Tribunal under the signature of Mr. Seeooduth Doongoor with its envelope. From the stamp that it bears, it appears that the letter was received at the Tribunal on the 3rd September 2015. The content of the letter shows clearly that the appellant has informed of his intention to appeal against the decision of the Council with regard to the application for BLUP in favour of Feroze Sahebally and also annexed to the letter were other letters enumerating the complaints of the appellant.

4. In the case file of Mr. Munnohur, the notice of appeal is dated "29.09.15" and received at the Tribunal on the 30th Sept 2015 with the date of notification having been set as "22/08/15" and the photocopy of an envelope has been attached as evidence of receipt of notification clearly showing a letter head of "The District Council of Pamplemousses" and bearing the date "21/08/15" and an initial. This file also contains a letter addressed to the Secretary of the Tribunal dated 7th September 2015 and received at the Tribunal on the 9th September 2015 again informing of his intention in very clear terms to appeal against the decision of the Council for having granted a BLUP to the co-respondent. His letter also contains his grievances.

5. These two cases having been lodged before the Tribunal in 2015, before the amendments were brought in to the **Environment and Land Use Appeal Tribunal Act 2012** by **The Finance (Miscellaneous Provisions) Act 2016**, the burden on the person wishing to appeal was to lodge an appeal with the Secretary of the Tribunal within 21 days from the date of notification of the impugned decision setting out clearly their grounds of appeal. We believe that the notice of appeal as set out in the schedule

provides guidance to appellants as to the information that is required by the Tribunal in order to entertain the appeal. We believe that it is a matter of substance and not form.

6. In this case on perusal of the letters initially sent by the appellants to the Secretary of the Tribunal all relevant information as normally required in the Notice of Appeal was provided. Therefore, applying the law to the present facts, the Tribunal is of the view that since the appellants wished to contest the decision of the Council for having granted the BLUP, the only duty they had under the law was to notify the Secretary of the Tribunal within the statutory time frame of 21 days of their intention to appeal, which they did and the respondent knew that there was an appeal lodged against their decision to grant a BLUP to the co-respondent. The Notice of Appeal completed by the appellants is a prescribed form so that they are in compliance with the law. We believe that the way in which **S. 5 (4) (a) of the ELAT Act 2012** is drafted, it does allow the Tribunal some discretion as regards the manner in which the appeal is lodged.

7. Having gone through the statement of case of each appellant, we believe that the appellants do have genuine qualms with regards nuisance associated to the project of the proponent as well as issues regarding the application of planning instruments. This Tribunal is not in favour of dismissing an appeal purely on a technical point. This is in line with the provision under **section 5 (3) (b) of the ELAT Act 2012** that the proceedings should be conducted with as little formality and technicality as possible. Although the degree of formality and technicality to be applied varies on a case to case basis, we believe that in this case, looking at the matter in its totality, it is only fair to allow the appellants to take their case forward. There can be no prejudice caused to the respondent or the co-respondent as they were already notified that the decision of the Council to approve the BLUP was being contested and the grounds of appeal were provided. True it is that the co-respondent was put into the picture at a later stage but the merits of this appeal are yet to be debated before this Tribunal and in order to avoid

any possibility of prejudice, the co-respondent was allowed to put in its pleadings and given an equally fair chance to defend his case.

8. As regards the second limb of the *Plea in Limine*, it is clear that **s. 5 (4) (a) of the ELAT Act 2012** as it stood prior to the amendments, neither talks of interested parties nor of affected persons nor co-respondents. We cannot read more into the Act than what has been clearly stipulated. Therefore, applying the law to the present facts, the Tribunal is of the view that since the appellant wished to contest the decision of the Council for having granted the BLUP, the only duty it had under the law was to notify the Secretary of the Tribunal within the statutory time frame of 21 days of their intention to appeal, which they did. To impose a requirement upon an appellant, in the absence of express language, that *all parties who may have an interest in proceedings* be notified within the time limit, would be to stretch the interpretation of the section beyond reasonable bounds. This view supports the fact that a lay person should be able to initiate and prosecute an appeal without the assistance of a legal representative.

9. Now, it cannot be denied that Mr. Feroze Sahebally has an interest in the matter, since the BLUP was granted in his favour. The Tribunal subscribes to the view that out of procedural fairness an interested party, the BLUP holder in this case, should be joined as a party in whose presence the appeal be heard. In **The Public Service Commission v/s The Public Bodies Appeal Tribunal IPO Man Lan Wong Chow Ming (2011) SCJ 382**, the supreme court decided that the appeal be remitted back to the PBAT to be heard anew with an order directing the PBAT to allow an interested party be joined as a party.

10. We therefore dismiss this contention of the co-respondent and find that if ever the co-respondent felt that the proceedings were defective at the outset in that the co-respondent, being an interested party, was not put into cause then that so-called defect has already been cured by the subsequent joinder of the co-respondent. Consequently, we find that no prejudice has been caused to the co respondent because he was given

the opportunity to file a statement of defence and has been given the opportunity to make representations before this Tribunal even before the case has started.

11. For all the reasons given above, the *plea in limine* raised by the co-respondent is set aside and the case is to proceed on its merits.

Ruling delivered on 19th July 2019 by

Mrs. J. RAMFUL	**Mr. B. RAJEE**	**Mr. L. CHEONG**
Vice Chairperson	**Member**	**Member**